



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Carl C. Hardin, Jr.,
Executive Secretary
Texas State Board of Dental Examiners
Austin, Texas

Dear Sir:

Opinion No. O-7154

Re: A. Are the enclosed display ads a violation of Article 752b of the Penal Code, paragraphs (e) and (o) and the proviso at the end of said article?

B. What is your interpretation of the meaning of "professional announcement" or "professional card" in said proviso?

Your request for an opinion on the above questions has been received and carefully considered by this department. We quote your letter as follows:

"A. Are the enclosed display ads a violation of Article 752b of the Penal Code, paragraphs (e) and (o) and the proviso at the end of said article?

"B. What is your interpretation of the meaning of 'professional announcement' or 'professional cards' in said proviso?

"I am enclosing several large display ads which have been brought to my attention as Attorney for the Texas State Board of Dental Examiners.

"After considerable briefing, it is my opinion that these display ads are in direct violation of Article 752b of the Penal Code, paragraphs (e) and (o), and the last paragraph in said article as amended. I arrived at this decision by virtue of the lengthy discussion in the cases, Rust vs. Missouri Dental Board, 155 S. W. (2d) 80; Winberry, et al. vs.

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Hallihan, et al., 197 N. E. 552, Johnson vs. Board of Dental Examiners, 134 Fed. (2d) 9 and Modern System Dentists Inc., et al, vs. State Board of Dental Examiners of Wis., 256 N. W. 922, and I would appreciate an opinion from you as to whether the enclosed ads are in violation of the paragraphs of the article cited.

"I am also enclosing a copy of a Brief prepared for Dr. B. Carl Holder, President of the Texas State Board of Dental Examiners, in connection with the last paragraph of Article 752b of the Penal Code, as amended; and, after an examination of this Brief, I would appreciate a separate written opinion on your construction of the article covered by my Brief."

In our Opinion No. 0-1992, we construed Article 752b, Vernon's Annotated Penal Code of Texas, and stated as follows:

"In your letter you ask the following questions:

"In other words under Article 752b, supra, taken as a whole, may dentist, without infringing the criminal laws, advertise in any manner and with as much space as he desires, so long as he does not violate one of the specific prohibitions in subsection "a" through "t", or is his advertising limited by the proviso, to a mere statement of his name, degree, office location, etc?"

"In answering this question we would first point out as stated above that apparent intention of the Legislature was to preserve a long standing customary right to the dentist and not to restrict him. Certainly since this is a criminal statute and must be strictly construed, it would seem clear that the dentist could advertise in any manner and with as much space as he desires so long as his advertising did not fall under the prohibited practices of the article in question.

"We therefore respectfully advise that Article 752b, Penal Code as amended, is valid and constitutional and the proviso at the end of said article is permissive rather than restrictive."

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"B". We believe that the foregoing answers your question

The last paragraph of Article 752b may not be made the basis for a criminal prosecution since said paragraph prohibits no practice whatsoever, but merely indicates the type of advertising which a dentist may employ without violating any of the provisions of the Act. It is our opinion, therefore, that the advertisements submitted do not constitute violations of the said paragraph.

We do not believe that any of the advertisements submitted by you violate subsection (o) of Article 752b, for in Opinion No. 0-2743 concerning that subsection, we stated:

"'Large display signs' mentioned in this subdivision, when considered in connection with other things mentioned in the subdivision, must be construed as something other than newspaper advertisements."

In our opinion, each of the advertisements constitutes a fact situation to be determined by the jury as to whether or not the statements made in such advertisements are "of such a character tending to mislead or deceive the public" and thereby a violation of subsection (e) of Article 752b.

We trust that this satisfactorily answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

James N. Ware

James N. Ware
Assistant

JNW:zd

APPROVED MAY 6, 1948
Carl C. Hardin, Jr.
FIRST ASSISTANT
ATTORNEY GENERAL

